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BOOK REVIEWS.

HARRY ROTKOWITZ, *Editor-in-Charge.*

THE LAW AND THE PRACTICE OF MUNICIPAL HOME RULE. By HOWARD LEE MCBAIN. New York: COLUMBIA UNIVERSITY PRESS. 1916. pp. xviii, 724.

In preparing this work Professor McBain has rendered a valuable service to students of municipal government and to the legal profession. The work opens with a discussion of the scope of legislative power over cities. Numerous instances are given of the practice formerly universally prevailing of interference by the legislatures of the states with the local affairs of cities, the result being that city governments were under the complete domination of the state politicians, and the people of the city had but little voice in the control of the affairs vitally concerning them. The irritation produced by this interference, which was considered unwarranted by the people of the cities, created a demand for a remedy.

In a few states the courts announced the doctrine of an inherent right of local self government. The author points out that this doctrine had but little basis in principle and, as it was actually applied, did not prevent the legislature from interfering with cities in a large variety of respects. The federal constitution afforded no refuge for the oppressed municipalities.

The author then discusses the constitutional limitations directed at specific legislative abuses. Some states amended their constitutions so as to provide for local election of certain city officers, and many states enacted provisions relating to the financial powers of cities and containing other prohibitions upon the powers of legislatures in specific instances, but these failed to give the cities the protection they desired.

More comprehensive protection being necessary, many state constitutions thereupon prohibited special legislation, which secured a small degree of immunity to the cities but were largely evaded by legislative classification of cities. In Ohio, for example, the Supreme Court until 1902 sustained a legislative classification whereby each city constituted a class by itself, and the legislature could, at will, regulate the "class".

In consequence of legislative meddling, a widespread agitation has resulted for what has come to be known as "home rule". As a result, the constitutions of twelve states have been amended to provide for various forms of home rule by permitting cities to frame their own charters. These states are Missouri, California, Washington, Minnesota, Colorado, Oklahoma, Arizona, Oregon, Michigan, Ohio, Nebraska and Texas, and the movement is still spreading. No two of these states have covered this subject in precisely the same fashion.

It is to these home rule constitutional provisions, the results obtained through them and the judicial decisions discussing them that Professor McBain's book is devoted. The matter of providing for home rule charters by constitutional provisions is a novel one, and the results of the constitution makers are, for the most part, crudely expressed; and, as the author points out, they frequently jar with other provisions in the constitution. In one case, the home rule provision is

not reconcilable even with other amendments adopted by the same constitutional convention.

The chief difficulty in framing a home rule charter consists in defining the measure of governmental authority which is to be given to a city, and in delimiting its powers from those of the state. A large question of public policy is presented in determining in what respects a city shall be subject to general state laws and where it shall be itself sovereign.

For the most part, home rule amendments cover the subject in very general terms; and necessarily there are numerous conflicts between acts of the legislature on the one hand and provisions of home rule charters or ordinances passed under them on the other. In view of the varied and numberless lines of state and municipal activity, no one could enumerate all the possible points of controversy. In some respects a prototype of this field of legal controversy is found in the judicial demarcation of the line between powers of the federal government and those of the state government.

The larger part of the work is taken up with a discussion of the scope of powers granted directly to cities by home rule amendments and the powers which cities may assume to themselves in framing their charters under such amendments. In California there are scores of judicial decisions with respect to such conflicts between state and municipal authority. The constitution there provides that city charters adopted by authority of the constitution shall be subject to general laws "except in municipal affairs". Just what is a "municipal affair" is a matter to be determined by the courts. The term cannot be adequately defined. Similar problems are presented to the courts of all the home rule states. The author has collected all the judicial decisions in which there were questions arising out of conflict between state laws and home rule provisions or ordinances passed thereunder. This was a laborious task and has been performed exceedingly well. Although this body of the law is still in its infancy, it is surprising how many judicial decisions have already appeared. In addition to discussing the problems that have already arisen, the author puts before himself, and suggests solutions of, hypothetical questions which will doubtless come before the courts in the future.

The author takes up each home rule state separately, quoting the constitutional provisions in full, giving a list of the cities that have adopted charters and then discussing the decisions relating thereto. The work concludes with a discussion of problems of public policy, such as: Shall the machinery for the initial exercise of home rule powers be prescribed by the constitution or by statute? Shall either the legislature or governor be given a veto power over charters or charter provisions? Shall the provisions of home rule charters be made subject to "general laws"? Shall home rule charters be made subject to laws of general concern?

In addition to pointing out what the results of home rule have been thus far, the book makes clear the point that the home rule amendments are needlessly indefinite and vague. By paying heed to the decisions upon the present constitutional amendment a state which adopts home rule amendments in the future should be able to do it so clearly as to prevent much of the controversy which arose over the construction of the now existing provisions.

As the book was not written by a practicing lawyer and was not intended solely for reference by practitioners, it is not a legal text of

the type which lawyers ordinarily consult. But the work will be exceedingly useful to lawyers having litigation in this field, and will be a great time saver in view of the complete collection of authorities on the subject. It is in fact the only work in its field. The work serves a dual purpose and the author discusses the policy of various provisions of the constitutions and statutes as freely as he analyzes the decisions.

Paul J. Bickel.

CRIMINALITY AND ECONOMIC CONDITIONS. By WILLIAM ADRIAN BONGER. Translated by Henry P. Horton. Boston: LITTLE, BROWN & Co. 1916. pp. xxi, 706.

This book makes a somewhat exhaustive study of criminality and the relation between criminality and economic conditions, and impresses the reader at the outset with its wealth of information and detail. While an American reader may not agree with many of the deductions made by Dr. Bonger, nevertheless the work should prove of value to students of sociology, of criminal conditions and the like.

The first half of the book is given over to a review of the works of those who have already written on the subject and contains some valuable criticisms of the various works that have gone before. The American reader doubtless will not agree with all the criticisms made by Dr. Bonger any more than he will feel able to agree with his deductions in the second half of the book. Nevertheless the review of these various authorities is very exhaustive, and the criticisms are evidently based upon a thorough study and wide experience.

Part II of the book treats of the present economic system, its consequences and its effect upon and relation to criminality. This part of the work is the more interesting. The first criticism that an American reader would make is that Dr. Bonger considers social conditions from the point of view of a socialist, and finds the source of all evil in the existence of wealth and capital and the relationship between capital and labor.

The attitude of the author is shown quite clearly in the following quotation:

"Human labor thus has become a commodity corresponding exactly to definition: First, it has no use-value for the possessor if he has not the means of production, and, on the other hand, has such a value for the person possessing these means: Second, the possessor of labor has the free disposition of it."

Another quotation:

"The so-called 'reserve army of labor' is a condition indispensable to capitalism—without it the power of organized labor would become so great, that the surplus value would run serious danger. It is just because the supply of labor exceeds the demand that the power of the capitalist over the workman is so great and also that it happens so often that the interests of the workman are thwarted."

In view of the recent intervention of our Congress in the differences between the railroads and their employees through the enactment of the Eight Hour Law, the following quotation is interesting:

"As regards the length of the working day; moderate work is a pleasure, excessive work mere torment. Except in so far as the laws